

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL W. DANCER,

**Plaintiff,**

V.

JON JESKE, *et al.*

**Defendants.**

Case No. 09-5153 BHS/KLS  
REQUEST FOR  
ORDER DENYING WRIT OF  
MANDAMUS

14 This civil rights action has been referred to United States Magistrate Judge Karen L.  
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has been  
16 granted leave to proceed *in forma pauperis*. Plaintiff's complaint has not yet been served. Before  
17 the Court is Plaintiff's "writ of mandamus." Dkt. # 4. Having carefully reviewed Plaintiff's writ  
18 and balance of the record, the Court finds, for the reasons stated below, that the writ should be  
19 denied.

## I. DISCUSSION

21 The federal mandamus statute provides that “[t]he district courts shall have original  
22 jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United  
23 States or an agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1331. Mandamus  
24 is an extraordinary remedy. *Barron v. Reich*, 13 F.3d 1370, 1374 (9<sup>th</sup> Cir. 1994). A writ of  
25 mandamus is appropriately used only when (1) the petitioner’s claim is “clear and certain”; (2) the  
26 respondent official’s duty to act is ministerial and (3) no other adequate remedy is available. *Id.*  
27 (citing *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9<sup>th</sup> Cir. 1986)).

28 | OPDÉP 1

1       Here Plaintiff asks the court to issue an order directing the Lewis County Correctional  
2 Facility to "produce and deliver to the Plaintiff in custody, legal materials and legal books pursuant  
3 to his action against DFW officer Jon Jesche 'color of law' violation of plaintiffs civil rights." Dkt.  
4 # 4, p. 1.

5       The extraordinary remedy of mandamus is not appropriate to compel the type of relief  
6 sought by Plaintiff in this lawsuit. The district court does not have jurisdiction to issue a writ of  
7 mandamus to state officers. *Demos v. United States Dist. Court for E. Dist. Of Wash.*, 925 F.2d  
8 1160, 1161 (9<sup>th</sup> Cir. 1991).

9       Accordingly, Plaintiff's request for mandamus (Dkt. # 4) is **DENIED**. The Clerk is directed  
10 to send copies of this Order to Plaintiff.

11  
12       DATED this 29<sup>th</sup> day of <sup>April</sup> May, 2009.

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14         
15       Karen L. Strombom  
16       United States Magistrate Judge